

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DONTE MILBURN,	:	
	:	1:12-cv-121
Plaintiff,	:	
	:	Hon. John E. Jones III
v.	:	
	:	Hon. Thomas M. Blewitt
CITY OF YORK, <i>et al.</i> ,	:	
	:	
Defendants.	:	

ORDER

August 21, 2012

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

This matter is before the Court on the Report and Recommendation (“R&R”) of Magistrate Judge Thomas M. Blewitt (Doc. 40), filed on July 24, 2012, which recommends that the Defendants’ Motion to Dismiss (Doc. 20) and the Plaintiff’s Motion for Default Judgment (Doc. 35) be denied. The Magistrate Judge further recommends that the matter be remanded to him for further proceedings. *Pro se* Plaintiff Donte Milburn (“Plaintiff” or “Milburn”) filed objections to the R&R on August 9, 2012 (Docs. 42 and 43). Accordingly, this matter is ripe for our review. For the reasons that follow, we shall adopt the Magistrate’s recommendation in its entirety.

I. STANDARD OF REVIEW

When objections are filed to the report of a magistrate judge, the district court makes a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objections are made. 28 U.S.C. § 636(b)(1); *United States v. Raddatz*, 447 U.S. 667, 674-75 (1980). The court may accept, reject, or modify, in whole or in part, the magistrate judge's findings or recommendations. *Id.* Although the standard of review is *de novo*, 28 U.S.C. § 636(b)(1) permits whatever reliance the district court, in the exercise of sound discretion, chooses to place on a magistrate judge's proposed findings and recommendations. *Raddatz*, 447 U.S. at 674-75; *see also Mathews v. Weber*, 423 U.S. 261, 275 (1976); *Goney v. Clark*, 749 F.2d 5, 7 (3d Cir. 1984).

II. DISCUSSION

Plaintiff initiated this 42 U.S.C. § 1983 civil rights action against the following Defendants: 1) City of York; 2) Michael Hose; 3) Richard Peddicord; and 4) Jeffrey Spence. Specifically, Plaintiff brings claims of malicious prosecution and abuse of process, as well as a Failure to Train and Supervise claim against the City of York. This case arises out of Plaintiff's arrest for the homicide of Juan Laboy that occurred on August 28, 2006. Plaintiff was charged with criminal homicide, robbery and two counts of criminal conspiracy, however, all of

the charges against him were dismissed by the York County Court of Common Pleas for lack of evidence. Plaintiff claims that his civil rights were violated by the Defendants during these events.

After the filing of the action, the Defendants responded with a Motion to Dismiss, arguing that Plaintiff's action was filed outside of the applicable statute of limitations and that the Plaintiff failed to adequately allege facts to support a *Monell* claim against the City of York. The Magistrate Judge concluded within his R&R, and we agree, that under the prison mailbox rule, Plaintiff's claim was timely filed. Additionally, the Magistrate Judge determined that, at the motion to dismiss phase, Plaintiff had set forth sufficient facts on the *Monell* claim to proceed. We also agree with this pragmatic conclusion, and as such, shall deny the Defendants' Motion to Dismiss.¹

With respect to Plaintiff's Motion for Default Judgment, we also agree with the Magistrate Judge that the Motion must be denied. First of all, a Motion for Default judgment cannot be granted until after a Clerk's entry of default is filed. In this case, there is no basis for a Clerk's entry of default because the Defendants' Motion to Dismiss (Doc. 20) is responsive pleading to the Plaintiff's Complaint, thus the Defendants have not defaulted. Plaintiff's objections to this portion of the

¹ Notably, the Defendants did not lodge objections to the R&R.

Magistrate Judge's R&R are based on a misconstruction of the rules of civil procedure.

Accordingly, based on all of the foregoing, we shall adopt the R&R in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Report and Recommendation of Magistrate Judge Blewitt (Doc. 40) is **ADOPTED** in its entirety.
2. The Defendants' Motion to Dismiss (Doc. 20) is **DENIED**.
3. The Plaintiff's Motion for Default Judgment (Doc. 35) is **DENIED**.
4. The Defendants shall file an answer to the complaint within twenty (20) days of the date of this Order.
5. This matter is **REMANDED** to Magistrate Judge Blewitt for all further pre-trial management.

s/ John E. Jones III
John E. Jones III
United States District Judge